

UNITED STATES DISTRICT COURT

for the

Western District of North Carolina

United States of America)	
v.)	
Larry Donnell Erby Jr.)	Case No: <u>3:04CR84-1</u>
Date of Previous Judgment: <u>11/3/05</u>)	USM No: <u>19597-058</u>
(Use Date of Last Amended Judgment if Applicable))	<u>Claire Rauscher</u>
)	Defendant's Attorney

Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months **is reduced to** _____.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level: <u>21</u>	Amended Offense Level: <u>21</u>
Criminal History Category: <u>III</u>	Criminal History Category: <u>III</u>
Previous Guideline Range: <u>46</u> to <u>57</u> months	Amended Guideline Range: <u>46</u> to <u>57</u> months

II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- ☐ The reduced sentence is within the amended guideline range.
- ☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- ☒ Other (explain): Although this is a firearms case, the defendant believes he should receive a reduction because the cross reference set forth the quantity of marijuana and cocaine powder for which he was responsible. However, since the defendant was not held responsible for any crack cocaine, he is not eligible for a sentence reduction.

III. ADDITIONAL COMMENTS

This order is in response to a pro se motion filed by the defendant. Since he has no attorney, the Federal Defender for the Western District of North Carolina, Claire Rauscher, will be listed as his attorney.

Except as provided above, all provisions of the judgment dated 11/3/05 shall remain in effect.

IT IS SO ORDERED.

Order Date: December 3, 2008

Effective Date: _____
(if different from order date)



Graham C. Mullen
United States District Judge

